



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 528**

IN THE MATTER OF LIFE INSURANCE ASSOCIATION OF MASSACHUSETTS, INC.

Appearances: David A. Wilson, Esq.
Counsel for Petitioner

John J. Curtin, Jr., Esq.
Steven W. Hansen, Esq.
Janice W. Howe, Esq.
Counsel for Respondent

Commissioners: Brown, Ch., McDonough, Larkin and Rapacki

Presiding Officer: Commissioner George D. Brown, Esq.

DECISION AND ORDER

I. Procedural History

On June 20, 1995, the Petitioner initiated these proceedings by issuing an Order To Show Cause ("OTSC") pursuant to the Commission's Rules of Practice and Procedure. 930 C.M.R. §§ 1.01(1)(a) *et seq.* The OTSC alleged that from July 21, 1989 through March 12, 1993, the Life Insurance Association of Massachusetts, Inc. ("LIAM") violated G.L. c. 268A, § 3(a) on nine occasions by providing free meals and, on one occasion, a set of golf clubs, to Massachusetts state employees, including several current and one former state legislator, one legislative staff member and the Commissioner of Insurance. On July 26, 1995, LIAM filed an Amended Answer.^{1/}

Pre-hearing conferences were held on July 26, 1995, October 18, 1995, April 18, 1996, October 17, 1996 and April 30, 1997. At those conferences, issues surrounding discovery were discussed and Commissioner George Brown, as the presiding officer, addressed scheduling and management of the hearing.

To protect information subject to the confidentiality provisions of G.L. c. 268B, §4 from disclosure at the hearing, the parties drafted a confidentiality agreement. On October 20, 1995, Commissioner Brown incorporated that agreement into a Protective Order.

Evidentiary hearings were held on three days: May 5, 6 and 7, 1997. At the conclusion of the Petitioner's case, LIAM filed a Motion to Dismiss which was not ruled on by the Presiding Officer at that time. LIAM renewed its Motion to Dismiss at the conclusion of the hearing.

After the conclusion of the evidentiary portion of the hearing, on May 7, 1997, the parties submitted legal briefs. 930 C.M.R. §1.01(9)(k). The parties also presented their closing arguments before the full Commission on September 9, 1997. 930 C.M.R. §1.01(9)(e)(5). Deliberations began in executive session on that date. G.L. c. 268B, §4(i); 930 Code Mass. Regs. §1.01(9)(m)(1).

In rendering this Decision and Order, each undersigned member of the Commission has considered the transcript testimony, evidence and legal argument of the parties.

II. Findings of Fact

The parties, through their counsel, have stipulated and agreed that the following facts are true and established for purposes of the adjudicatory proceedings. We adopt their following joint stipulations as findings of the Commission.

1. LIAM's members' insurance business activities are taxed and regulated by the Commonwealth of Massachusetts.

2. On average, about six bills affecting the insurance business are enacted into law each year in the Commonwealth of Massachusetts.

3. LIAM professional staffers, Frank O'Brien, Steven Tringale and Elizabeth Rothberg, were Massachusetts registered legislative agents for LIAM in certain parts of the years 1989 through 1993.

4. On July 21-23, 1989, the National Conference of Insurance Legislators ("NCOIL") held a conference in Boston, Massachusetts. The 1989 NCOIL Boston conference was attended by, among others, many insurance industry representatives and state legislators from around the United States.

5. On July 21, 1989, Massachusetts State Representative Francis Woodward ("Woodward") and his wife, and William Carroll ("Carroll") and his wife had dinner together at the Marriott in Boston. The total cost for the July 21, 1989 dinner was \$302.53, inclusive of tax of \$12.03 and tip of \$50. Mr. Carroll paid the July 21, 1989 dinner bill with his LIAM American Express card. LIAM subsequently paid the American Express card charge for the cost of the July 21, 1989 dinner. Woodward did not pay anything toward the July 21, 1989 dinner.

6. On or about July 21, 1989, Woodward as a State Representative and Joint Committee on Insurance House Chairman, had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM's members.

7. The July 21, 1989 Marriott dinner was not an official part of the 1989 NCOIL Boston conference.

8. On December 20, 1989, Massachusetts State Representative Francis G. Mara ("Mara"), Joint Committee on Insurance staffer Robert Smith ("Smith") and Luke Dillon ("Dillon") had dinner together at Locke-Ober Restaurant in Boston. The total cost of the December 8, 1989 dinner was \$150.53 inclusive of tax in the amount of \$6.03 and a tip of \$24. Dillon paid the December 20, 1989 dinner bill with his American Express card. LIAM subsequently reimbursed Dillon by check for the December 20, 1989 dinner expense. Mara and Smith did not pay anything toward the December 20, 1989 dinner.

9. On or about December 20, 1989, Mara, as a State Representative and House Vice Chairman of the Joint Committee on Insurance, had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM's members.

10. On March 23-25, 1990, NCOIL held a conference in Tulsa, Oklahoma. The 1990 NCOIL conference was attended by, among others, many insurance industry representatives and state legislators from around the United States.

11. On March 22, 1990, Woodward and his wife, John Hancock legislative agent F. William Sawyer ("Sawyer") and his wife, and Carroll had dinner together at the Fountains Restaurant in Tulsa. The total cost of the March 22, 1990 dinner was \$171.42, inclusive of tax in the amount of \$9.25 and a tip in the amount of \$30. Carroll paid the March 22, 1990 dinner bill with his LIAM American Express card. LIAM subsequently paid the American Express card charge for the cost of the March 22, 1990 dinner as a business expense. Woodward did not pay anything toward the March 22, 1990 dinner.

12. On March 23, 1990, Woodward and his wife, Sawyer and his wife, and Liberty Mutual Insurance Co. legislative agent Thomas Driscoll ("Driscoll") had dinner together at the Fountains Restaurant in Tulsa. The total cost for the March 23, 1990 dinner was \$199.28, inclusive of tax in the amount of \$10.75 and a tip in the amount of \$35. Carroll paid the March 23, 1990 dinner bill with his LIAM American Express card. LIAM

subsequently paid the American Express card charge for the cost of the March 23, 1990 dinner as a business expense. Woodward did not pay anything toward the March 23, 1990 dinner.

13. On or about March 22 and 23, 1990, Woodward, as State Representative and House Chairman of the Joint Committee on Insurance, had the authority to take official action on legislative matters which would affect the financial interests of, among others, LIAM's members.

14. Neither the March 22, 1990 Fountains Restaurant dinner nor the March 23, 1990 Fountains Restaurant dinner was an official part of the 1990 NCOIL Tulsa conference.

15. On November 25-28, 1990, NCOIL held a conference in Lake Buena Vista, Florida. The 1990 NCOIL Lake Buena Vista conference was attended by many insurance industry representatives and state legislators from around the United States.

16. On November 24, 1990, about twenty people, including Massachusetts State Representatives Frank Emilio ("Emilio") and his wife, Carroll, Sawyer, Driscoll, insurance industry consultant Michael Sabbagh ("Sabbagh"), Sabbagh's client William Henne, Daniel Foley and Thomas Crowley had dinner together at the Stouffer Restaurant in Orlando, Florida. The total cost of the November 24, 1990 dinner was \$2,243.97, inclusive of tax in the amount of \$109.50 and a tip in the amount of \$309.52. Carroll paid the November 24, 1990 dinner bill with his LIAM credit card. LIAM subsequently paid the credit card charge for the cost of the November 24, 1990 dinner. Emilio did not pay anything toward the November 24, 1990 dinner.

17. On or about November 24, 1990, Emilio, as a State Representative and a member of the Joint Committee on Insurance, had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM's members.

18. The November 24, 1990 Stouffer Restaurant dinner was not an official part of the 1990 NCOIL Lake Buena Vista conference.

19. Emilio, while a State Representative, on three occasions in 1988 and 1989 filed proposed legislation for LIAM. During his tenure as a State Representative, Emilio filed proposed legislation on a number of occasions for other individuals or entities. Prior to his election as a State Representative, Emilio had worked as an insurance agent.

20. In January, 1991, LIAM contributed \$127.62 toward the cost of a dinner held on January 8, 1991 for former Representative Emilio and a set of golf clubs given to former Representative Emilio. The total cost of the dinner was \$541.24, inclusive of \$90 for a tip and \$21 for taxes. Nine persons attended the dinner, including former Representative Emilio and a former aide. The total cost of the golf clubs was \$404.25 of which \$19.25 was sales tax.

21. On November 17-20, 1991, NCOIL held a conference in Scottsdale, Arizona. The 1991 NCOIL Scottsdale conference was attended by, among others, many insurance industry representatives and state legislators from around the United States.

22. On November 16, 1991, about twenty persons, including Carroll and his wife, Sawyer and his wife, Woodward and his wife, Massachusetts State Senator Robert Havern ("Havern") and his wife, Massachusetts State Representative Marc Pacheco ("Pacheco"), Massachusetts State Representative Daniel Ranieri ("Ranieri:") and his wife, Sabbagh, John Hancock lobbyist Ralph Scott and Daniel Foley had dinner together at the Avanti of Scottsdale Restaurant in Scottsdale, Arizona. The total cost of the November 16, 1991 dinner was \$1,170, inclusive of tax in the amount of \$62.79 and a tip in the amount of \$170. Carroll paid the November 16, 1991 dinner bill with his LIAM American Express card. LIAM subsequently paid the American Express card charge for the November 16, 1991 dinner. None of the Massachusetts state legislators present at the November 16, 1991 Avanti dinner paid anything toward the dinner.

23. On or about November 16, 1991, the Massachusetts legislators present at the November 16, 1991 Avanti dinner had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM members.

24. The November 16, 1991 Avanti dinner was not an official part of the 1991 NCOIL Scottsdale conference.

25. On May 13, 1992, Massachusetts Insurance Commissioner Katherine Doughty (“Commissioner Doughty”), Carroll and Dillon had dinner together at the Four Seasons Restaurant in Boston. The total cost of the May 13, 1992 dinner was \$337.46, inclusive of tax in the amount of \$13.21 and a tip in the amount of \$60. Carroll paid the May 13, 1992 dinner bill with his LIAM credit card. LIAM subsequently paid the May 13, 1992 credit card bill charge for the cost of the May 13, 1992 dinner. Commissioner Doughty did not pay anything toward the May 13, 1992 Four Seasons dinner.

26. On or about May 13, 1992, Doughty, as State Insurance Commissioner, had the authority to take official action on regulatory matters which could affect the financial interests of, among others, LIAM’s members.

27. On March 12-14, 1993, NCOIL held a conference at Amelia Island Plantation on Amelia Island, Florida. The 1993 NCOIL Amelia Island conference was attended by, among others, many insurance industry representatives and state legislators from around the United States.

28. On March 12, 1993, Carroll had dinner at The Grill Restaurant at the Ritz Carlton Hotel (“Ritz”) on Amelia Island, Florida with about 24 other people, including Massachusetts state legislators and registered legislative agents and their spouses or guests. Those present with Carroll at the March 12, 1993 dinner included Dillon, Sawyer and his wife, registered legislative agent Arthur Lewis and his wife, Massachusetts Medical Society registered insurance industry legislative agent Andrew Hunt, Blue Cross and Blue Shield registered legislative agent Marcy McManus, Health Insurance Association of America and Massachusetts Association of Life Underwriters registered legislative agent Donald Flanagan, Francis Carroll of the Small Business Service Bureau, Inc., Joint Committee on Insurance House Chairman Representative Mara and his wife, Joint Committee on Insurance House Vice Chairman Representative Thomas Walsh and his wife, Joint Committee on Insurance and Joint Health Care Committee member Representative William Cass (“Cass”), Joint Government Regulations House Chairman Representative Michael Walsh (“Walsh”) and his wife, Joint Government Regulations House Vice Chairman and Joint Health Care Committee member Representative Kevin Honan (“Honan”) and his guest, Joint Committee on Taxation House Chairman Representative Angelo Scaccia (“Scaccia”), House Committee on Bills in Third Reading Chairman Representative John Cox (“Cox”) and his wife, and House Ways and Means Committee member Representative Kevin Poirier (“Poirier”).

29. The total cost of the Ritz dinner on March 12, 1993 was \$3,089.16, inclusive of tax in the amount of \$146.94 and a tip in the amount of \$493.22. Carroll paid the March 12, 1993 dinner bill with his LIAM credit card. LIAM subsequently paid the credit card charge for the cost of the March 12, 1993 dinner. LIAM subsequently in April, 1993, received contributions towards this expenditure in the amount of \$1,100. None of the Massachusetts legislators present at the March 12, 1993 Ritz dinner paid anything toward the dinner.

30. On or about March 12, 1993, the state legislators present at the March 12, 1993 Ritz dinner, as state representatives, had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM’s members.

31. The March 12, 1993 Ritz dinner was not an official part of the 1993 NCOIL Amelia Island conference.

32. None of the expenditures referenced in the Order to Show Cause were paid by LIAM because of personal friendship.

33. In 1993, House 53 (H.53), An Act Further Regulating Insurance, was a Weld administration bill to bring Massachusetts insurance laws into conformity with the National Association of Insurance Commissioners (“NAIC”) accreditation standards program and was regarded by the Weld administration, insurance regulators and the insurance industry, as important. H.53 was introduced and supported by the Governor. The Joint Committee on Insurance held a public hearing on H.53 on March 22, 1993. Several witnesses testified in favor of H.53, among them were representatives of the Weld administration, including the Massachusetts Commissioner of Insurance, a New Hampshire insurance regulator representing NAIC, and insurance industry representatives, including Carroll on behalf of LIAM. No witnesses testified in opposition to H.53. LIAM and others unrelated to LIAM sought changes to H.53 before its passage. In the Joint Committee on Insurance, LIAM sought revision of the extraordinary dividends language in H.53 in order to allow the legislation to comply with NAIC

standards. On June 16, 1993, the Joint Committee on Insurance reported out favorably an amended version of H.53 (H.5220). In the Senate, LIAM sought a change to the extraordinary dividends language when the bill was being debated on the Senate floor at the third reading stage to correct an error in the language. The Senate subsequently voted to approve H.5220.

34. In 1992 and 1993, LIAM supported increased funding for the Division of Insurance.

35. Prior to and during 1993, LIAM, through its legislative agents, engaged in legislative activity in connection with certain insurance and taxation issues.

36. On March 6, 1991, Carroll testified before the Joint Committee on Taxation. Scaccia then served as House Chairman.

37. In a letter dated March 31, 1992, addressed to Senator Keating and Representative Scaccia, as Joint Committee on Taxation Co-Chairmen, Carroll submitted written testimony on behalf of LIAM supporting H.3466, An Act Reforming the Taxation of Domestic Life Insurance Companies, a 1992 bill to repeal the state net investment income tax. The bill was sent to "study" and did not pass. Keating and Scaccia did not support LIAM's position.

38. In a letter dated March 31, 1992, addressed to Keating and Scaccia, as Joint Committee on Taxation Co-Chairmen, Carroll filed written testimony on behalf of LIAM opposing H.2378 and 2568, Acts Relative to Bank Taxation and Competitive Equality, and H.2912, An Act Relative to the Taxation of Banks and Bank-like Entities.

39. By letter dated March 30, 1993, addressed to Keating and Scaccia, as Joint Committee on Taxation Co-Chairmen, Carroll filed written testimony on behalf of LIAM supporting H.4434, An Act Reforming the Taxation of Domestic Life Insurance Companies, which, if passed, would have repealed the Commonwealth's net investment income tax on domestic life insurance companies. This bill was heard by the Joint Committee on Taxation on March 24, 1993. Subsequent to the hearing, the bill was sent to "study" and did not pass. Keating and Scaccia did not support LIAM's position.

40. In addition to LIAM's \$127.62 contribution to the cost of the January 8, 1991 dinner and golf clubs for former Representative Emilio, the American Insurance Association paid \$127.62, John Hancock paid \$187.66, The New England paid \$187.66 and two other LIAM member companies paid a total of \$195 either directly to Sawyer or by reimbursing their respective legislative agents who had paid Sawyer.

41. At times, during the years 1989 to 1991, Woodward took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

42. At times, during 1989 and 1990, Emilio took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

43. At times, during the years 1989 to 1993, Mara took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

44. At times, during the years 1989 to 1993, Smith took actions as Insurance Committee staffer relating to pending legislation, including legislation affecting the financial interests of LIAM's members.

45. At times, during the years 1990 to 1993, Havern took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

46. At times, during the years 1990 to 1993, Scaccia took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

47. At times, during the years 1991 to 1993, Representative and Senator Pacheco took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

48. At times, during the years 1990 to 1992, Ranieri took official actions concerning pending legislation,

including legislation affecting the financial interests of LIAM's members.

49. At times, during the years 1991 to 1993, T. Walsh took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

50. At times, during the years 1991 to 1993, M. Walsh took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

51. At times, during the years 1991 to 1993, Honan took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

52. At times, during the years 1991 to 1993, Poirier took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

53. At times, during the years 1991 to 1993, Cox took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

54. At times, during the years 1991 to 1993, Cass took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

55. At times, during the years 1992 and 1993, Commissioner Doughty took official actions concerning pending legislation, including legislation affecting the financial interests of LIAM's members.

In addition to the foregoing, based on the credible testimony, exhibits and record, we find the following facts:

56. LIAM is a trade association of Massachusetts-based commercial life, health and disability insurers. Among LIAM's members during the years mid-1989 to mid-1993 were John Hancock Mutual Life Insurance Company ("John Hancock"), Massachusetts Mutual Life Insurance Company ("Mass Mutual"), New England Life Insurance Company ("New England"), State Mutual Life Insurance Company ("State Mutual"), Paul Revere Life Insurance Company ("Paul Revere"), Boston Mutual Life Insurance Company ("Boston Mutual"), Berkshire Life Insurance Company ("Berkshire") and Liberty Life ("Liberty").

57. LIAM's primary purpose is to represent its members collectively on matters related to insurance legislation and regulatory matters. LIAM's members use the association to monitor proposed laws and regulatory matters affecting the insurance business and to advocate their position as group in order to modify, pass or defeat proposed laws or to affect regulatory matters.

58. On average, more than 100 bills filed in the Massachusetts legislature each year affect the insurance business.

59. At all times during 1989 to 1993, bills proposing new laws, or changes to existing laws, affecting the interests of LIAM's members were pending in the Massachusetts legislature and regulatory matters affecting those same interests were under consideration by Massachusetts insurance regulators.

60. At all times during 1989 to 1993, Carroll was employed by LIAM as its President and as a Massachusetts registered legislative agent. During this same time period, LIAM retained the services of Dillon, an outside lobbyist.

61. On March 6, 1989, the Joint Committee on Insurance ("Insurance Committee") held a hearing on H.4901 (regulating HIV testing in determining eligibility for health care insurance). Carroll provided testimony at that hearing opposing H.4901 and supporting H.609, a pending LIAM-sponsored bill.

62. On June 22, 1989, S.715, which sought to reduce health insurance rates for non-smokers, was reported out by the Insurance Committee as "ought not to pass."

63. In mid-July, Woodward proposed, and the House of Representatives ("House") approved, an amendment

to the universal health care law (St. 1988, c. 23), which would delay full implementation of the law by two years.

64. On July 21, 1989, among the bills of interest to LIAM pending before the Insurance Committee were: H.609, the LIAM-sponsored Privacy Bill (establishing standards for the collection, use and disclosure of privacy information concerning insurance transactions); H.4901 (regulating HIV testing in determining eligibility for health care insurance); and S.2099 (freezing rates for individual and small group products).

65. On or about October 10, 1989, the House debated S.715, a bill opposed by LIAM, at which time, Woodward was among a group of legislators who argued against the bill.

66. On November 28, 1989, the Insurance Committee held a hearing on S.2099. LIAM employee Steven Tringale provided testimony in opposition to the bill.

67. On November 9, 1989, the Insurance Committee reported out both H.609 and H.4901 with a study order.

68. On December 28, 1989, the Insurance Committee reported out S.2099 with a new draft.

69. During 1990, at least 11 bills of interest to LIAM were pending before the Insurance Committee, for which Mara continued to serve as Vice-Chairperson. Those bills included: H.553, the LIAM-sponsored Privacy Bill; H.734, permitting insurers to value real estate at assessed value; H.1349, permitting life insurance companies to exchange policies with their affiliates; H.2157, concerning valuation of capital stock of insurers and subsidiaries; H.5649, concerning investments of insurance companies; H.3343, regulating access to health care; H.2493, H.2496, H.3560, concerning gender neutral insurance; H.3559, concerning reduced insurance rates for non-smokers; and H.79, concerning discrimination against the handicapped.

70. In 1990, H.553 was sponsored for LIAM by Emilio.

71. In 1990, H.5649, concerning investments of insurance companies, was sponsored for LIAM by Mara.

72. In 1989 and 1990 Smith provided summaries and explanations of proposed insurance legislation to the Insurance Committee members. He also participated in or assisted in the drafting of proposed legislation and/or amendments to proposed legislation pending before the Insurance Committee. Additionally, Smith provided information to LIAM regarding matters pending before the Insurance Committee.

73. On March 14, 1990, the Insurance Committee held a hearing on H.734, a LIAM-sponsored bill (permitting insurers to value real estate at an assessed value).

74. On March 28, 1990, LIAM submitted testimony to the Insurance Committee regarding H.3343.

75. On April 2, 1990, LIAM submitted testimony to the Insurance Committee with regard to H.2493, H.2496, H.3559, H.3560, H.73, H.553 and H.79.

76. On May 21, 1990, the Insurance Committee reported out H.553, the LIAM-sponsored privacy bill, with a new draft. The Insurance Committee reported out favorably H.734 and H.1349 on May 31, 1990 and H.5469 on June 6, 1990, all of which had been sponsored by LIAM. No report issued from the Insurance Committee in 1990 with regard to the other above-identified bills in which LIAM had an interest during that year.

77. The January 8, 1991 dinner and gift of golf clubs to Emilio was organized by Sawyer. In advance of the dinner, Carroll had agreed to contribute to the event and the gift. Carroll did not, however, attend the dinner. Of the seven guests, other than Emilio and his former legislative aide, in attendance at the January 8, 1991 dinner, one was a representative of LIAM, one represented the American Insurance Association, and all of the others were from three of LIAM's member insurance companies (John Hancock, The New England and Mass Mutual).

78. On February 14, 1991, the Insurance Committee held a hearing on S.597 establishing a Medex study committee of which LIAM would be a member. Dillon was scheduled to testify in support of that legislation.

79. On February 14, 1991, the Insurance Committee held a hearing in relation to H.1346 (increasing mental illness mandated benefits), H.1343 (allowing the substitution of outpatient mental illness treatment for inpatient mental illness treatment) and H.391 (LIAM-sponsored bill allowing exchange of policies between affiliated companies). Dillon was scheduled to testify in opposition to H.1346 and in favor of H.1343 and H.391.

80. LIAM representatives, including Dillon, submitted testimony on March 20, 1991 in relation to: H.390 (allowing domestic insurance companies to convert to stock form of ownership); H.3973 (allowing certain investments in insurance policies and annuity contracts); H.4165 (concerning valuation of capital stock of subsidiaries of insurers); and S.568 (establishing lower insurance rates for non-smokers).

81. On March 6, 1991, the Joint Taxation Committee ("Taxation Committee") held a hearing on H.4076 (relating to the taxation of domestic life insurance companies). At that hearing, Carroll provided testimony in support of the legislation.

82. On April 3, 1991, the Insurance Committee held a hearing on S.569 (establishing lower insurance rates for non-drinkers). LIAM lobbyist Francis O'Brien provided a statement opposing that legislation.

83. On April 22, 1991, the Insurance Committee held a hearing on H.2342 (promoting insurance company competition by repealing the anti-trust exemption). LIAM through its legislative agents, submitted a statement in opposition to that legislation.

84. On November 16, 1991, H.6206 (health care benefits for small employers), sponsored by LIAM, was pending before the Insurance Committee. Also on that date, the following bills of interest to LIAM were among those pending in the legislature and ready to be acted upon by both branches: H.6280 and H.6307 (both relating to health care access and financing).

85. On November 21, 1991, Ranieri, Pacheco and Woodward voted, at least twice, as members of the House on H.6280.

86. On December 21, 1991, Ranieri, Pacheco and Woodward voted as members of the House on H.6307.

87. On December 12, 1991 Havern voted on H.6307.

88. On December 4, 1991, the Insurance Committee held a hearing on H.6206, a LIAM-sponsored bill which, on December 5, 1991, was reported out by that Committee with a study order.

89. By the end of the 1991 legislative year, several bills affecting the financial interests of LIAM=s members had been put to a floor vote of the full House and certain of those bills had also been acted upon by the full Senate. These included H.6307 (an amended version of H.6280), signed into law, St.1991, c. 495; H.1667, signed into law, St.1991, c. 516; H.391, returned by Governor; H.6015 (an amended version of H.390), signed into law, St.1991, c. 339; H.3973, signed into law, St.1991, c. 347; and H.4165, approved and engrossed by House, but died in Senate Third Reading Committee.

90. As the Commissioner of Insurance in 1992, Doughty headed the Massachusetts Division of Insurance.

91. Beginning in January, 1992, LIAM representatives met with Division of Insurance employees regarding obtaining NAIC accreditation. By the standards of the NAIC, a state division of insurance is deemed qualified to regulate the industry in its state. NAIC accreditation in substantial part depends on the state division of insurance being properly funded, staffed, organized and managed, as well as the passage of certain legislation.

92. In 1992, LIAM supported NAIC accreditation of the Insurance Division. Without such accreditation, LIAM took the position that Massachusetts insurance companies would suffer substantial competitive disadvantages when doing business in other states.

93. In early 1992, LIAM representatives believed that Doughty was "not paying careful attention" to the management aspects of NAIC accreditation.

94. On April 29, 1992, Carroll contacted Insurance Division staff member Cynthia Martin seeking to meet with her and Doughty on that part of the accreditation process relating to “restructuring the Insurance Division, including funding, staffing, etc.”

95. Prior to May 13, 1992, Carroll attempted to discuss accreditation issues with Doughty in her office, but he had not been successful. Carroll, therefore, desired to meet with Doughty in an “informal” or “easier setting” to discuss issues relating to the management of the Insurance Division in anticipation of an NAIC accreditation examination visit expected to occur in 1993.

96. In May, 1992, issues relating to the NAIC accreditation, including the filing of necessary legislation and securing an appropriation to allow for increased staffing, were pending at the Division of Insurance.

97. In July, 1992, while LIAM and the Insurance Division were reviewing drafts of legislation needed for NAIC accreditation, LIAM lobbyist O’Brien was in frequent contact with the Insurance Division.

98. By July 29, 1992, the Insurance Division filed the legislative packet necessary for NAIC accreditation.

99. As of January 25, 1993, H.53 was pending in the Insurance Committee.

100. As of January 25, 1993, LIAM was engaged in drafting certain language (relating to an extraordinary dividends provision in H.53) which it intended to present to the Insurance Committee.

101. In January, 1993, LIAM was engaged in an effort to have H.53 heard by the Insurance Committee at the earliest possible opportunity. As of February 4, 1993, Dillon had met with members of the Insurance Committee concerning a hearing date for H. 53, which by February 25, 1993, had been scheduled for March 22, 1993.

102. By March of 1993, LIAM and the Division of Insurance had devised a joint strategy for seeking legislative approval of the legislation necessary for NAIC accreditation (H.53). That strategy involved Doughty’s meeting individually with each member of the Insurance Committee and insurance industry representatives.

103. Prior to March 12, 1993, both Carroll and Dillon had spoken to T. Walsh regarding H.53.

104. On March 8, 1993, the Insurance Committee held hearings on eight bills which sought to mandate that insurers provide new health insurance benefits. Those bills were S.615 (insurance coverage for mental illness), S.624 (access to educational psychologists services), S.626 (access to mental health services), S.658 (mandating insurance coverage for bone densitometry), H.313 (requiring insurance payments for the toxin Botulinum), H.716 (providing for home care services for certain children), H.1320 (improving mental health services), and H.2039 (reimbursement by health insurers for bone marrow transplants for breast cancer patients). LIAM submitted a statement in opposition to all of these bills.

105. As of February 19, 1993, Cox had been identified by William Sawyer to LIAM as a “key legislator” in relation to the legislature’s consideration of H.53.

106. As of February 4, 1993, Dillon had met with the staff of the House Ways and Means Committee concerning NAIC-related funding for the Division of Insurance.

107. On March 9, 1993, the Joint Health Care Committee (“Health Care Committee”) held a hearing on H.1818 (relating to coverage by certain health care insurance plans and policies of costs arising from speech and language disorders). At that hearing, LIAM submitted a statement in opposition to the legislation.

108. On March 9, 1993, the Health Care Committee held hearings in relation to H.506, H.1812, H.2571 and S.487 (regulating entities performing utilization review). At that hearing, a statement in opposition to all four bills was jointly submitted by LIAM and the Health Insurance Association of America.

109. On March 12, 1993, at least 17 bills, in addition to those listed in Finding No. 104, were pending in the Insurance Committee and of interest to LIAM.

110. On March 12, 1993, H.4434, which concerned the taxation of domestic life insurance companies, was pending in the Taxation Committee and of interest to LIAM.

111. On March 12, 1993, several bills of interest to LIAM were pending before the Health Care Committee which, in addition to those discussed in Finding Nos. 54 and 55, included a series of bills relating to a single payer insurance system (S.478, H.1082, H.2796, H.3555), health care financing (S.489, H.505, H.2018), determination of need (S.455, H.504, H.2210), uncompensated care pool (H.1660, H.1652, H. 2205), and competition (H.1656).

112. On March 22, 1993, the Insurance Committee held a hearing on H.1846 (exempting life, health and accident insurance benefits from seizure under process). In connection therewith, LIAM provided a statement in support of H.1846.

113. On March 22, 1993, the Insurance Committee held a hearing on H.1110 and H.2821 (both entitled an Act Creating an Insurance Community Reinvestment Act). During the hearing Carroll provided a statement in opposition to the bills.

114. On April 5, 7 and 12, 1993, the Insurance Committee held hearings in relation to 14 bills which mandated additional insurance benefits. LIAM submitted a statement opposing all 14 bills.

115. On June 16, 1993, the Insurance Committee reported out H.53, with a new draft, and H.5220, which was reported out favorably. Thereafter, H.5220 was referred to the House Ways and Means Committee which reported out the bill on September 20, 1993 with a recommendation that the bill Aought to pass with certain amendments.” Also on September 20, 1993, H.5220 was reported out by the House Committee on Bills in Third Reading “to be correctly drawn.” A third reading of the H.5220 followed and the bill was passed to be engrossed. Following action by the Senate and concurrence by the House in Senate proposed Amendments, on November 6, 1993, H.5220 was enacted and presented to the Governor, who signed the bill into law on November 9, 1993.

116. On March 25, 1993, LIAM submitted its recommendation on 14 bills for which the Health Care Committee held hearings on March 24, 1993 (listed in Finding No. 111).

117. On March 24, 1993, the Taxation Committee conducted a hearing regarding H.4434.

III. Decision

A. Statute of Limitations

As a preliminary matter, we must decide whether the charges against LIAM with respect to all of the alleged gratuities, except the meal paid for by LIAM on March 12, 1993, are time-barred. We conclude, for the reasons discussed below, that none of the charges is time-barred.

The Commission applies to its proceedings a three-year statute of limitations, including tolling provisions, in accordance with the principles established by *Town of Nantucket v. Beinecke*, 379 Mass. 345 (1979). The Supreme Judicial Court stated in that case:

We conclude that the essence of an action under the [conflict of interest] statute is breach of official duty . . . The [trial] judge properly applied the . . . tort statute of limitations contained in G.L. c. 260, § 2A.^{2/} . . . The judge correctly stated that . . . “the statute commences to run when the plaintiff knew or should have known of the wrong.” [citations omitted] . . . [A]s a general proposition . . . only when those disinterested persons who are capable of acting on behalf of the town knew or should have known of the wrong should the town be charged with knowledge.

Id., 379 Mass. at 349-351 (emphasis added). The Commission’s regulation, 930 C.M.R. §1.02(10), implements the *Beinecke* standard by requiring, among other things, that the Petitioner demonstrate by a preponderance of the evidence that a disinterested person capable of enforcing the conflict law^{3/} learned of the violation no more than three years before the OTSC was issued.

The Respondent first argues that the statute of limitations is not subject to tolling where punitive rather

than remedial relief is sought. We reject this argument for the reasons discussed below.

The Respondent fails to cite any Massachusetts or First Circuit Court of Appeals authority in support of its position. Instead, it relies on a case from the District of Columbia Court of Appeals, *3M Co. v. Browner*, 17 F.3d 1453 (D.C. Cir. 1994), which is inapposite. In that case, the federal court interpreted a particular federal statute of limitations, 28 U.S.C. ‘2462, governing federal actions for the enforcement of a civil fine or penalty. The Supreme Judicial Court has expressly rejected the argument that Commission proceedings are governed by a similar Massachusetts statute of limitations, G.L. c. 260, §5, applicable to actions brought by the Commonwealth to recover fines and penalties under penal statutes. *Zora v. State Ethics Commission*, 415 Mass. at 647 (1993).

Additionally, the Supreme Judicial Court has “rejected the notion that the remedy at issue is the primary factor which determines the applicable limitation period” for a conflict law violation. *Zora*, 415 Mass. at 647 (citing *Beineke*, 379 Mass. at 349). Rather, the Court looked to the nature of the underlying action to determine the applicable limitations period. It follows, therefore, that the type of remedy which the Commission might impose if it finds a violation would not determine when the cause of action accrues for purposes of commencing the limitations period in an action under G. L. c. 268A.^{4/}

Second, the Respondent argues that, even if tolling principles were applicable, the Petitioner has not demonstrated that the alleged violations were “inherently unknowable” or that it had exercised “reasonable diligence” in ascertaining the facts which give rise to such violations. We reject this argument also.

In *Beineke* the Court upheld the tolling of the statute of limitations in an action brought by the Town of Nantucket under G. L. c. 268A, §21 to void a deed tainted by Town employees’ violations of G. L. c. 268A, §§19 and 20(a). In doing so, the Court, in effect, applied a “discovery rule,” which tolls the running of the statute of limitations until plaintiff knows or reasonably should have known of the violation.^{5/} See, e.g., *Hendrickson v. Sears*, 365 Mass. 830 (1974). Massachusetts courts apply the rule to avoid the harsh alternative of barring a plaintiff from being able to bring an action when he or she is unaware of the injury or violation until the entire or a significant portion of the limitations period has elapsed. See *Franklin v. Albert*, 381 Mass. 611, 619 (1980). As the Court noted in *Beineke*, “[w]e feel that a realistic notice concept is appropriate under the Conflict of Interest Law . . . in order to further the [protective] purposes of the legislation.” *Beineke*, 379 Mass. at 350.

Pursuant to 930 C.M.R. §1.02 (10) (c),^{6/} the Petitioner submitted an affidavit of its investigator then responsible for the case attesting that no complaints relating to the violation had been received more than three years before the OTSC was issued.^{7/} Moreover, it submitted affidavits from the Attorney General and the Suffolk County District Attorney attesting that their respective offices had not received any complaints relating to the violations more than three years before the OTSC issued. We conclude that the affidavit of the Enforcement Division’s investigator establishes by a preponderance of the evidence that the Petitioner, a disinterested person capable of enforcing G. L. c. 268A, did not have actual knowledge of the gratuities more than three years before the OTSC issued. We further conclude that all the affidavits, taken together, establish by a preponderance of the evidence that Petitioner reasonably should not have known of the gratuities more than three years before the OTSC issued.^{8/} Accordingly, the statute of limitations was properly tolled.^{9/}

Finally, Respondent argues that the two affidavits filed by the Petitioner with respect to the Office of the District Attorney for Suffolk County (one from current District Attorney, Ralph C. Martin, II and one from his predecessor, Newman Flanagan), do not satisfy the requirements of 930 C.M.R. §1.02(10)(c). District Attorney Martin’s affidavit reads, in relevant part:

On September 2, 1992, I became Suffolk County District Attorney.

In March 1997, I received a request from Special Investigator Juan A. DeLeon of the Massachusetts State Ethics Commission to conduct a search of relevant files and records of the Suffolk County District Attorney’s Office for evidence of any complaint made to this office regarding the Life Insurance Association of Massachusetts, Inc., unlawfully providing gratuities to Massachusetts public officials.

I caused a diligent search to be made as requested. That search, which included all complaint files opened during my tenure as Suffolk District Attorney, uncovered no records reflecting receipt of such a complaint by this office at any time more than three years prior to June 20, 1995, or at any time since.

On information and belief, complaint files for the period proceeding [sic] my tenure as Suffolk District Attorney are in the possession of former Suffolk District Attorney Newman Flanagan.

The affidavit of former Suffolk County District Attorney Newman Flanagan reads in pertinent part:

I was the Suffolk County District Attorney until September 2, 1992.

I have caused to be made a diligent search of the records of the office of the Suffolk District Attorney in my possession and found no record of any complaint dated before June 20, 1992, regarding the Life Insurance Association of Massachusetts, Inc. unlawfully providing gratuities to Massachusetts public officials.

Respondent asserts that, “Mr. Martin does not purport to have reviewed any records for complaint files opened *prior* to September 2, 1992 and thus his affidavit, standing alone, would not satisfy Rule 1.02(10)(c), which is intended to require Petitioner to show that ‘a disinterested person learned of the violation no more than three years before the order [to show cause] was issued.’” Post-Hearing Memorandum of Life Insurance Association of Massachusetts, Inc., p. 13 (emphasis included). Respondent further argues that Mr. Flanagan’s affidavit is inconsistent with the regulation because it is from a former incumbent, and it is inadequate by failing to state that the records in his possession include records of all complaints filed prior to September 2, 1992. Thus, Respondent concludes that the Petitioner has failed to meet its burden under the regulation.

We do not find these arguments persuasive. We read Mr. Martin’s affidavit as establishing that, as requested by the Petitioner, he searched all relevant files and records of his office including, but not limited to, complaint files opened during his tenure as District Attorney. Thus, to the extent, if any, that complaint files opened prior to September 2, 1992 remain in the office of the Suffolk County District Attorney, Mr. Martin caused a search of those records to be made. To the extent, if any, that complaint files opened prior to Mr. Martin’s tenure are in Newman Flanagan’s possession, Mr. Flanagan attested that he searched those records. Thus, we conclude that the Petitioner established by a preponderance of the evidence that the Office of the Suffolk County District Attorney received no complaint relating to the Respondent’s alleged violations more than three years before the OTSC issued.

For all the reasons stated herein, we conclude that Petitioner has demonstrated by a preponderance of the evidence that it satisfied the common law tolling principles and the requirements of 930 C.M.R. §1.02(c). Thus, none of the Petitioner’s claims is time-barred.

B. Section 3(a)

Pursuant to §3(a) of G.L. c. 268A:

Whoever otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, gives, offers or promises anything of substantial value to any present or former state, county or municipal employee . . . for or because of any official act performed or to be performed by such an employee . . . shall be punished

As we have previously stated, §3(a) establishes a gratuity offense, the essence of which is the giving of an item of “substantial value” to a public official “for or because of any official act performed or to be performed” by him. We have interpreted the §3 language to require the Petitioner to establish the existence of a relationship or nexus between the gratuity and the performance of a public employee’s official acts. See, e.g., *In re Antonelli*, 1982 SEC 101, 108; *Scaccia* 1996 at 844. See also *United States v. Sawyer*, 85 F.3d 713, 729, 735-736 (1st Cir. 1996).

It is unnecessary to demonstrate that, by providing the gratuity, the giver succeeded in influencing the recipient’s performance of his or her official acts. *In re Antonelli*, *supra*. Moreover, the Petitioner need not establish corrupt intent to influence official decision-making. *Id.* See also, *Commonwealth v. Dutney*, 4 Mass. App. Ct. 363, 375 (1976). Rather, as the Commission recently discussed in *Scaccia*, 1996 at 844, there can be a § 3 violation even if the gratuity is intended only to “reward” the public official for actions he has already taken or which he may take in the future. Expressing a similar sentiment, the United States Court of Appeals for the

First Circuit stated recently:

As the word gratuity implies, the intent most often associated with the offense is the intent to “reward” an official for an act taken in the past or to be taken in the future. . . . The official act might otherwise be properly motivated and the gratuity, though unlawful, might not be intended to influence the official’s mindset with regard to that particular action.

United States v. Sawyer, 85 F.3d at 730. Additionally, we have not required that a gratuity be tied to specifically identified official action to be unlawful. *Scaccia*, 1996 at 844; *In re United States Trust Company*, 1988 SEC 356, 358 (“For purposes of § 3, it is unnecessary to prove that the gratuities were generated by some specific identifiable act performed or to be performed.”); *United States v. Sawyer*, 85 F.3d at 738.

Thus, in determining if a gratuity is given for or because of any official act performed or to be performed, we will evaluate whether, at the time the donor gives the gratuity, the recipient has already taken any official act and/or reasonably can be expected to take any future official act concerning matters of interest to the donor. See *In re Hebert*, 1995 SEC 800 at 806. See also *United States v. Sawyer*, 85 F.3d at 735-736. Especially given the prophylactic nature of the conflict of interest law, to interpret § 3 otherwise could subject public employees to a host of temptations which would undermine the impartial performance of their public duties.

In addition, for at least the past 15 years, we have interpreted the term “substantial value” to mean meals, golf or other gifts valued at \$50 or more. See *Commonwealth v. Famigletti*, 4 Mass. App. 584 (1976); *Commission Advisory No. 8 (Free Passes)* (1985).¹⁰ In *EC-COI-93-14*, the Commission re-considered whether \$50 should serve as the threshold for substantial value for purposes of § 3. The Commission concluded, “[w]e believe that the \$50 threshold serves the public interest in maintaining the integrity of the government decision-making process, and provides a realistic and workable measure which public officials may use to guide their conduct.” *Id.*¹¹

Background Relevant to All Gratuities

LIAM is a trade association of Massachusetts-based commercial life, health and disability insurers. The insurance business in Massachusetts is subject to many state laws and regulations. LIAM’s primary purpose is to represent its members collectively on matters related to insurance legislation and regulatory matters. On average, more than 100 bills filed in the Massachusetts legislature each year affect the insurance business. LIAM’s members use the association to monitor proposed laws and regulatory matters affecting the insurance business and to advocate their position as a group in order to modify, pass or defeat proposed laws or to affect regulatory matters. At all times here relevant, bills proposing new laws, or changes to existing laws, affecting the interests of LIAM’s members were pending in the Massachusetts legislature and regulatory matters affecting those same interests were under consideration by Massachusetts insurance regulators.

From 1989 through 1993, Carroll was employed by LIAM as President and as a Massachusetts registered legislative agent. Additionally, during the relevant time period, LIAM retained the services of Dillon, an outside lobbyist.

1. July 21, 1989 Dinner (Marriott Hotel, Boston, MA)

The Petitioner alleges that LIAM violated § 3(a) when it bought dinner for Woodward and his spouse on July 21, 1989, at a cost of \$50 or more per person, for or because of official acts performed or to be performed by him.

As the parties have stipulated, Woodward and his wife had dinner with Carroll and his wife at the Marriott Hotel in Boston, Massachusetts on July 21, 1989 during the time period of the NCOIL conference in Boston. The July 21 dinner was not an official part of the 1989 NCOIL Boston conference. The total cost of the July 21 dinner was \$302.53, inclusive of tax of \$12.03 and a tip of \$50. Carroll paid the July 21 dinner bill with his LIAM American Express Card, and LIAM subsequently paid the American Express card charge for the cost of the dinner. Woodward did not pay anything toward the July 21 dinner.

On July 21, 1989, Woodward was a state representative and House Chairperson of the Joint Insurance

Committee. As a state representative, Woodward was a state employee within the meaning of G.L. c. 268A.^{12/} He had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM's members. Moreover, Woodward exercised that authority numerous times during the years 1989 through 1991, taking official actions concerning legislation affecting the interests of LIAM's members.

For example, prior to the July 21 dinner, on March 6, 1989, the Insurance Committee, which was at that time co-chaired by Woodward, held a hearing on H.4901 (regulating HIV testing in determining eligibility for health care insurance). Carroll provided testimony at that hearing opposing H.4901 and supporting of H.609, a pending LIAM-sponsored bill. On June 22, 1989, S.715, which sought to reduce health insurance rates for non-smokers, was reported out by the Insurance Committee as "ought not to pass." In mid-July, 1989, within days of the July 21 dinner, Woodward proposed, and the House approved, an amendment to the universal health care law (St. 1988, c. 23), which would delay full implementation of the law by two years.

At the time Carroll bought dinner for Woodward on July 21, at least three bills of interest to LIAM were pending in the Insurance Committee.^{13/} Given this fact, Woodward's role as Chairman of that Committee during 1989, and his duties and responsibilities in that role, Carroll and LIAM should reasonably have expected that subsequent to the dinner, Woodward would take official acts of interest to the organization and its members.

The record confirms that Woodward, in fact, did perform such official acts after July 21, 1989. On or about October 10, 1989, the House of Representatives debated S.715, a bill opposed by LIAM, at which time Woodward was among a group of legislators who argued against the bill. On November 28, 1989, the Insurance Committee held a hearing on S.2099. LIAM employee Steven Tringale provided testimony in opposition to the bill. Moreover, the record indicates that on November 9, 1989, the Insurance Committee reported out both H.609 and H.4901 with a study order and that on December 28, 1989, the Insurance Committee reported out S.2099 with a new draft.

The July 21 dinner for Woodward and his spouse cost \$50 or more per person^{14/} and, thus, was "of substantial value" for purposes of § 3(a).^{15/}

LIAM's payment for the July 21 dinner for Woodward was not provided for by law for the proper discharge of official duties.^{16/} Moreover, the parties stipulated that none of the expenditures referenced in the OTSC, including the July 21 dinner, was paid by LIAM because of personal friendship.

Given that LIAM's sole purpose for existing is to lobby on behalf of its member companies on matters related to insurance legislation and regulation and that, at the time of the July 21 dinner, Woodward had taken numerous official acts and reasonably could be expected to take future official acts of interest to LIAM, we conclude that LIAM bought Woodward's (and his wife's^{17/}) dinner for or because of any official act performed or to be performed by him. In light of the above-described evidence, we do not find credible Carroll's testimony that he did not pay for the July 21 dinner for or because of any official act performed or to be performed by Woodward.

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on July 21, 1989, LIAM violated § 3(a) by giving a gratuity of substantial value to Woodward, for or because of any official act performed or to be performed by him.

2. December 20, 1989 Dinner (Locke-Ober Restaurant, Boston, MA)

The Petitioner alleges that LIAM violated § 3(a) when it bought dinner for Mara and Smith on December 20, 1989.

As the parties have stipulated, Mara and Smith had dinner with Dillon at Locke-Ober Restaurant in Boston, Massachusetts on December 20, 1989. The total cost of that dinner was \$150.53, inclusive of tax of \$6.03 and a tip of \$24. Dillon paid the December 20 dinner bill with his American Express Card and LIAM subsequently reimbursed Dillon by check for the December 20 dinner expense. Mara and Smith did not pay anything toward the December 20 dinner.

On December 20, 1989, Mara was a state representative and Vice-Chairperson of the Insurance

Committee. As a state representative, Mara was a state employee within the meaning of G.L. c. 268A. At that same time, Smith was a staff member for the Insurance Committee. Because he performed services for the Massachusetts Legislature, Smith also was a state employee within the meaning of G.L. c. 268A. Mara had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM's members. Moreover, he exercised that authority on numerous times during the years 1989 through 1993, taking official actions concerning legislation affecting the interests of LIAM's members. In addition, during the years, 1989 through 1993, Smith also took actions relating to pending legislation, including legislation affecting the interests of LIAM's members.

For example, prior to the December 20 dinner, on March 6, 1989, the Insurance Committee, which was at that time vice-chaired by Mara, held a hearing on H.4901 (regulating HIV testing in determining eligibility for health care insurance). Carroll provided testimony at that hearing opposing H.4901 and in support of H.609, a pending LIAM-sponsored bill. On June 22, 1989, S.715, which sought to reduce health insurance rates for non-smokers, was reported out by the Insurance Committee as "ought not to pass." On or about October 10, 1989, the House of Representatives debated S.715, which was opposed by LIAM. On November 28, 1989, the Insurance Committee held a hearing on S.2099 in relation to which LIAM employee Steven Tringale provided testimony in opposition to the bill. Moreover, the record indicates that on November 9, 1989, the Insurance Committee reported out both H.609 (a LIAM-sponsored bill establishing standards for the collection, use and disclosure of privacy information concerning insurance transactions) and H.4901 (bill opposed by LIAM regulating HIV testing in determining eligibility for health care insurance) with a study order.

At the time Dillon bought dinner for Mara, at least one bill of interest to LIAM was still pending in the Insurance Committee.^{18/} Given that fact, Mara's role as Vice-Chairman of that Committee during 1989, and his duties and responsibilities in that role, Dillon and LIAM should reasonably have expected that Mara would take official acts of interest to LIAM and its members subsequent to the dinner.

The record confirms that Mara, in fact, did perform such official acts after the December 20 dinner. For example, on December 28, 1989, the Insurance Committee reported out S.2099 with a new draft. Furthermore, during 1990, at least eleven bills of interest to LIAM were pending in the Insurance Committee.^{19/} Included among those bills was H.5649, relating to investments of insurance companies, sponsored for LIAM by Mara.

The record also establishes that in 1989 and 1990, Smith, as a staff member for the Insurance Committee, provided summaries and explanations of proposed insurance legislation to Committee members. He also participated in, or assisted in the drafting of proposed legislation and/or amendments to proposed legislation pending before the Insurance Committee. Finally, the record indicates that Smith provided information to LIAM regarding matters involving the Insurance Committee. We, therefore, find that at the time of Smith's acceptance of the December 20 dinner from Dillon, Smith had taken official actions and LIAM should reasonably have expected that he would in the future take official actions affecting its interests.

The December 20 dinner for Mara and Smith cost \$50 or more per person and, thus, was "of substantial value" for purposes of § 3(a).^{20/}

LIAM's payment for the December 20 dinner for Mara and Smith was not provided for by law for the proper discharge of official duties. Moreover, the parties stipulated that none of the expenditures referenced in the OTSC, including the December 20 dinner, was paid by LIAM because of personal friendship.

Given that LIAM's sole purpose for existing is to lobby on behalf of its member companies on matters related to insurance legislation and regulation and that Mara and Smith had taken official acts and reasonably could be expected to take future official acts of interest to LIAM, we find that LIAM bought Mara's and Smith's dinners on December 20, 1989 for or because of any official act performed or to be performed by them. In light of the above-described evidence, we do not find credible Dillon's testimony that he did not pay for the December 20 dinner for or because of any official act performed or to be performed by Mara or Smith.

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on December 20, 1989, LIAM violated § 3(a) by giving a gratuity of substantial value to Mara and Smith, for or because of official acts performed or to be performed by them.

3. March 22 and 23, 1990 Dinners (Fountains Restaurant, Tulsa, OK)

The Petitioner also alleges that LIAM violated § 3(a) when it bought dinner for Woodward and his spouse on both March 22, 1990 and March 23, 1990.

As the parties have stipulated, Woodward and his wife had dinner with Carroll and John Hancock legislative agent Sawyer and his wife, at the Fountains Restaurant in Tulsa, Oklahoma on March 22, 1990 during the time period of the NCOIL conference in Tulsa, Oklahoma. On March 23, 1990, Woodward and his wife had dinner with Carroll, Sawyer and his wife, and Liberty Mutual Company legislative agent Thomas Driscoll at the Fountains Restaurant in Tulsa, Oklahoma. The March 22 and March 23 dinners were not an official part of the 1990 NCOIL Tulsa conference. The total cost of the March 22 dinner was \$171.42, inclusive of tax of \$9.25 and a tip of \$30. The total cost of the March 23 dinner was \$199.28, inclusive of tax of \$10.75 and a tip of \$35. In the case of both dinners, Carroll paid the dinner bill with his LIAM American Express Card, and LIAM subsequently paid the American Express card charge for the cost of the dinners. Woodward did not pay anything toward either the March 22 or the March 23 dinner.

On March 22 and 23, 1990, Woodward was a state representative and House Chairperson of the Insurance Committee. As a state representative, Woodward was a state employee within the meaning of G.L. c. 268A. He had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM's members. Moreover, he exercised that authority numerous times during the years 1989 through 1991, taking official actions concerning legislation affecting the interests of LIAM's members.

For example, approximately one week before the March 22 and 23 dinners, on March 14, 1990, the Insurance Committee, co- chaired by Woodward, held a hearing on H.734 (LIAM-sponsored bill permitting insurers to value real estate at an assessed value). At the time Carroll bought dinner for Woodward on March 22 and 23, at least 11 bills of interest to LIAM were pending in the Insurance Committee.^{21/} Given that fact, Woodward's role as Chairman of that Committee during 1990, and his duties and responsibilities in that role, Carroll and LIAM should reasonably have expected that Woodward would take official acts of interest to the organization and its members subsequent to the dinners.

The record confirms that Woodward, in fact, did perform such official acts after March 23, 1990. On March 28, 1990, LIAM submitted testimony to the Insurance Committee regarding H.3343.^{22/} In addition with regard to H.2493, H.2496, H.3559, H.3560, H.73, H.553 and H.79, LIAM submitted testimony to the Insurance Committee on April 2, 1990. Moreover, the record indicates that the Insurance Committee reported out favorably H.734 and H.1349 on May 31, 1990 and H.5469 on June 6, 1990, all of which had been sponsored by LIAM. Furthermore, on May 21, 1990, the Insurance Committee reported out H.553, the LIAM-sponsored privacy bill, with a new draft. The record indicates that no report issued from the Insurance Committee with regard to the other above-identified bills in which LIAM had an interest in 1990.

The March 22 and 23 dinners cost \$50 or more for Woodward and his spouse and thus, were "of substantial value" for purposes of § 3(a).^{23/}

LIAM's payment for the March 22 and 23 dinners for Woodward was not provided for by law for the proper discharge of official duties. Moreover, the parties stipulated that none of the expenditures referenced in the OTSC, including the March 22 and 23 dinners, was paid by LIAM because of personal friendship.

Given that LIAM's sole purpose for existing is to lobby on behalf of its member companies on matters related to insurance legislation and regulation and that Woodward had taken numerous official acts and reasonably could be expected to take future official acts of interest to LIAM, we find that LIAM bought Woodward's (and his wife's) dinners on March 22 and 23, 1990 for or because of any official act performed or to be performed by him. In light of the above-described evidence, we do not find credible Carroll's testimony that he did not pay for the March 22 and 23 dinners for or because of any official act performed or to be performed by Woodward.

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on March 22 and 23, 1990, LIAM violated § 3(a) by giving a gratuity of substantial value to Woodward, for or because of official acts performed or to be performed by him.

4. November 24, 1990 Dinner (Stouffer Restaurant, Orlando, FL)

The Petitioner alleges that LIAM violated § 3(a) when it bought dinner for Emilio and his spouse on November 24, 1990.

As, the parties have stipulated, Emilio and his wife had dinner with Carroll and approximately seventeen other individuals at the Stouffer Restaurant in Orlando, Florida on November 24, 1990 during the time period of the NCOIL conference in Lake Buena Vista, Florida. The November 24 dinner was not an official part of the 1990 NCOIL Lake Buena Vista conference. The total cost of that dinner was \$2243.97, inclusive of tax of \$109.50 and a tip of \$309.52. Carroll paid the November 24 dinner bill with his LIAM credit card, and LIAM subsequently paid the credit card charge for the cost of the dinner. Emilio did not pay anything toward the November 24 dinner.

On November 24, 1990, Emilio was a state representative and member of the Insurance Committee. As a state representative, Emilio was a state employee within the meaning of G.L. c. 268A. He had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM's members. Moreover, he exercised that authority numerous times during the years 1989 and 1990, taking official actions concerning legislation affecting the interests of LIAM's members.

For example, prior to the November 24 dinner, on three occasions in 1988 and 1989, Emilio filed proposed legislation for LIAM. Specifically, H.553, the LIAM-sponsored privacy bill pending before the Insurance Committee in 1990 had been filed by Emilio. Furthermore, as described above in relation to the March 22 and 23, 1990 dinner, there were numerous other bills of interest to LIAM pending in the Insurance Committee during 1990.^{24/}

The November 24 dinner for Emilio and his spouse cost \$50 or more per person and thus, was "of substantial value" for purposes of § 3(a).^{25/}

LIAM's payment for the November 24 dinner for Emilio was not provided for by law for the proper discharge of official duties. Moreover, the parties stipulated that none of the expenditures referenced in the OTSC, including the November 24 dinner, was paid by LIAM because of personal friendship.

Given that LIAM's sole purpose for existing is to lobby on behalf of its member companies on matters related to insurance legislation and regulation and that, at the time of the dinner, Emilio had taken numerous official acts of interest to LIAM, we find that LIAM bought Emilio's (and his wife's) dinner on November 24, 1990 for or because of any official act performed by him. In light of the above-described evidence, we do not find credible Carroll's testimony that he did not pay for the November 24 dinner for or because of any official act performed by Emilio.

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on November 24, 1990, LIAM violated § 3(a) by giving a gratuity of substantial value to Emilio, for or because of official acts performed by him.

5. January 8, 1991 Retirement Dinner (Joe Tecce's Restaurant, Boston, MA)

The Petitioner alleges that LIAM violated § 3(a) when it contributed \$127.62 towards the cost of a testimonial dinner and a gift set of golf clubs given to Emilio on January 5, 1991.

As the parties have stipulated, Emilio, a former aide and seven other people attended a dinner on January 8, 1991, at which time, Emilio was given a set of golf clubs. The total cost of the January 8 dinner was \$541.24, inclusive of tax of \$21.00 and a tip of \$90.00. The total cost of the golf clubs was \$404.25, inclusive of \$19.25 of sales tax.

The record indicates that the January 8 dinner (and gift of golf clubs) was organized by Sawyer. In advance of the dinner, Carroll had agreed to contribute to the event and the gift. Carroll did not attend the January 8 dinner. However, the record indicates that of the seven people, other than Emilio and his former aide, who attended the January 8 dinner, one was a representative of LIAM, one represented the American Insurance

Association, and all of the others were from three of LIAM's member insurance companies.^{26/} Subsequent to the dinner, Carroll received a memorandum from Sawyer dated January 11, 1991, detailing LIAM's share of the cost of the dinner and gift of golf clubs. Carroll paid Sawyer LIAM's share of \$127.62 by check dated January 21, 1991. In addition to LIAM, by paying Sawyer or reimbursing their legislative agents who had paid Sawyer, four LIAM member insurance companies and one insurance association contributed to the cost of either the January 8 dinner and/or the gift to Emilio.

As of January 8, 1991, Emilio no longer was a state representative. However, during 1990, Emilio was a state representative and member of the Insurance Committee. As a state representative, Emilio was a state employee within the meaning of G.L. c. 268A and on January 8, 1991, he was a "former state employee" as that term is used in G.L. c. 268A, § 3(a). He, while a state representative, had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM's members. Moreover, he exercised that authority numerous times during the years 1989 and 1990, taking official actions concerning legislation affecting the interests of LIAM's members.

For example, as discussed in relation to the November 24 dinner, on three occasions in 1988 and 1989, Emilio filed proposed legislation for LIAM. Furthermore, as described above in relation to the March 22 and 23, 1990 Dinner, there were numerous other bills of interest to LIAM pending in the Insurance Committee during 1990.

LIAM's share of the January 8 dinner for Emilio and gift of golf clubs cost \$50 or more and thus, was "of substantial value" for purposes of § 3(a).^{27/}

LIAM's payment of a share of the January 8 dinner for Emilio and gift of golf clubs was not provided for by law for the proper discharge of official duties. Moreover, the parties stipulated that none of the expenditures referenced in the OTSC, including the January 8 dinner and gift of golf clubs, was paid by LIAM because of personal friendship.

Given that LIAM's sole purpose for existing is to lobby on behalf of its member companies on matters related to insurance legislation and regulation and that Emilio had taken numerous official acts of interest to LIAM, we find that LIAM bought a portion of Emilio's dinner and paid a portion of the cost of the golf clubs given to him on January 8, 1991 for or because of any official act performed by him.^{28/} In light of the above-described evidence, we do not find credible Carroll's testimony that he did not pay for a portion of the cost of the January 8 dinner and gift of golf clubs for or because of any official act performed by Emilio.

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on January 8, 1991, LIAM violated § 3(a) by giving a gratuity of substantial value to Emilio, for or because of official acts performed or to be performed by him.

6. November 16, 1991 Dinner (Avanti Restaurant, Scottsdale, AZ)

The Petitioner alleges that LIAM violated § 3(a) when it bought dinner for at least four Massachusetts state representatives, including Woodward, and their respective spouses/guests on November 16, 1991.

As the parties have stipulated, about 20 persons, including Massachusetts legislators Woodward and his wife, Havern and his wife, Pacheco, Ranieri and his wife and John Hancock lobbyists Sawyer and his wife and Ralph Scott had dinner with Carroll and his wife at the Avanti of Scottsdale Restaurant, in Scottsdale, Arizona on November 16, 1991 during the time period of the NCOIL conference in Scottsdale, Arizona. The November 16 dinner was not an official part of the 1991 NCOIL Scottsdale conference. The total cost of the November 16 dinner was \$1170.00, inclusive of tax of \$62.79 and a tip of \$170. Carroll paid the November 16 dinner bill with his LIAM American Express Card, and LIAM subsequently paid the American Express card charge for the cost of the dinner. None of the Massachusetts legislators present paid anything toward the November 16 dinner.

On November 16, 1991, Woodward was a state representative, Havern was state senator, a member of the Taxation Committee, and Senate Chairperson of the Public Service Committee, Pacheco was a state representative and member of both the Government Regulations Committee and the Insurance Committee, and Ranieri was a state representative and member of the Government Regulations Committee. As members of the

Massachusetts Legislature, Woodward, Havern, Pacheco and Ranieri were each state employees within the meaning of G.L. c. 268A. The Massachusetts legislators present at the November 16 dinner had the authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM's members. Moreover, the legislators attending the November 16 dinner exercised that authority numerous times during 1991, taking official actions concerning legislation affecting the interests of LIAM's members.

For example, prior to the November 16 dinner, on February 13, 1991, the Insurance Committee, of which Pacheco was a member, held a hearing in relation to S.597 (establishing a Medex study committee of which LIAM would be a member). Dillon was scheduled to testify in support of the legislation. On February 14, 1991, the Insurance Committee held hearings in relation to H.1346 (increasing mental illness mandated benefits), H.1343 (allowing the substitution of outpatient mental illness treatment for inpatient mental illness treatment) and H.391 (LIAM-sponsored bill allowing exchange of policies between affiliated companies. Dillon was scheduled to testify in opposition to H.1346 and in favor of H.1343 and H.391. In addition, on March 20, 1991, LIAM representatives, including Dillon, submitted testimony in relation to: H.390 (allowing domestic insurance companies to convert to stock form of ownership); H.3973 (allowing certain investments in insurance policies and annuity contracts); H.4165 (concerning valuation of capital stock of subsidiaries of insurers); and S.568 (establishing lower insurance rates for non-smokers). On April 3, 1991, the Insurance Committee held a hearing on S.569 (establishing lower insurance rates for non-drinkers) and LIAM lobbyist Francis O'Brien provided a statement against the legislation. On April 22, 1991, during a hearing on H.2342 (promoting insurance company competition by repealing the anti-trust exemption), LIAM through its legislative agents, submitted a statement in opposition to the legislation.

Furthermore, on March 6, 1991, the Taxation Committee, of which Havern was a member, held a hearing in relation to H.4076 (relating to the taxation of domestic life insurance companies). At that hearing Carroll provided testimony in support of the legislation.

At the time Carroll bought dinner for Woodward, Havern, Pacheco and Ranieri, on November 16, several bills of interest to LIAM were pending in the legislature and poised to be acted upon both branches.^{29/} Furthermore, H. 6206 (health care benefits for small employers), which was sponsored by LIAM was pending before the Insurance Committee. Given these facts and the various duties and responsibilities of the legislators who attended the November 16 dinner, Carroll and LIAM should reasonably have expected that the legislators attending the November 16 dinner would take official actions of interest to the organization and its members subsequent to the dinner.

The record confirms that each of the legislators who attended the November 16 dinner, in fact, did perform such official acts after November 16, 1991. On November 21, 1991, Ranieri, Pacheco and Woodward all voted at least twice on H.6280, and all voted on H.6307 on December 21, 1991. On December 12, 1991 Havern voted on H.6307. Moreover, on December 4, 1991, the Insurance Committee held a hearing on H.6206, a LIAM-sponsored bill which was on December 5, 1991 reported out with a study order. Finally, by the end of the 1991 legislative year, several bills affecting the financial interests of LIAM's members had been put to a floor vote of the full House and certain of those bills had also been acted upon by the full Senate.^{30/}

The November 16 dinner for Woodward and his wife, Havern and his wife, Pacheco, and Ranieri and his wife cost \$50 or more per person and thus, was "of substantial value" for purposes of § 3(a).^{31/}

LIAM's payment for the November 16 dinner for Woodward, Havern, Pacheco and Ranieri was not provided for by law for the proper discharge of official duties. Moreover, the parties stipulated that none of the expenditures referenced in the OTSC, including the November 16 dinner, was paid by LIAM because of personal friendship.

Given that LIAM's sole purpose for existing is to lobby on behalf of its member companies on matters related to insurance legislation and regulation and that Woodward, Havern, Pacheco and Ranieri had taken official acts and reasonably could be expected to take future official acts of interest to LIAM, we find that LIAM bought Woodward (and his wife), Havern (and his wife), Pacheco and Ranieri (and his wife) dinner on November 16, 1991 for or because of any official act performed or to be performed by each legislator. In light of the above-described evidence, we do not find credible Carroll's testimony that he did not pay for the November 16 dinner for or because of any official act performed or to be performed by Woodward, Havern, Pacheco or

Ranieri.

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on November 16, 1991, LIAM violated § 3(a) by giving gratuities of substantial value to Woodward, Havern, Pacheco and Ranieri, for or because of official acts performed or to be performed by each of them.

7. May 13, 1992 Dinner (Four Seasons Restaurant, Boston, MA)

The Petitioner alleges that LIAM violated § 3(a) when it bought dinner for Massachusetts Commissioner of Insurance Doughty on May 13, 1992.

As the parties have stipulated, Doughty had dinner with Carroll and Dillon at the Four Seasons Restaurant in Boston, Massachusetts on May 13, 1992. The total cost of the May 13 dinner was \$337.46, inclusive of tax of \$13.21 and a tip of \$60. Carroll paid the May 13 dinner bill with his LIAM credit card, and LIAM subsequently paid the credit card bill charge for the cost of the dinner. Doughty did not pay anything toward the May 13 dinner.

On May 13, 1992, as Commissioner of Insurance, Doughty headed the Massachusetts Division of Insurance. Because she held an office in a state agency, Doughty was a state employee within the meaning of G.L. c. 268A. She had the authority to take official action on regulatory matters which could affect the financial interests of, among others, LIAM's members. Moreover, she exercised that authority numerous times during the years 1992 and 1993, taking official actions on regulatory matters affecting the interests of LIAM's members.

For example, prior to the May 13 dinner, beginning in January, 1992, LIAM representatives met with Division of Insurance employees regarding NAIC accreditation.^{32/} The record demonstrates that in 1992, LIAM supported NAIC accreditation of the Insurance Division. Without such accreditation, LIAM took the position that Massachusetts insurance companies would suffer substantial competitive disadvantages when doing business in other states. In early 1992, LIAM representatives believed that Doughty was "not paying careful attention" to the management aspects of NAIC accreditation. On April 29, 1992, Carroll contacted Insurance Division staff member Cindy Martin seeking to meet with her and Doughty on that part of the accreditation process relating to "restructuring the Insurance Division, including funding, staffing, etc." The record demonstrates that prior to May 13 dinner, Carroll's attempts to discuss accreditation issues with Doughty in an office setting had not been successful. Carroll therefore desired to meet with Doughty in an "informal" or "easier setting" to discuss issues relating to the management of the Insurance Division in anticipation of an NAIC accreditation examination visit expected to occur in 1993.

At the time Carroll bought dinner for Doughty on May 13, several issues relating to the NAIC accreditation were pending at the Division of Insurance.^{33/} Given that fact, Doughty's role as Insurance Commissioner during 1992, and her duties and responsibilities in that role, Carroll and LIAM should reasonably have expected that Doughty would take official acts of interest to the organization and its members subsequent to the May 13 dinner.

The record confirms that Doughty, in fact, did perform such official acts after May 13, 1992. In July, 1992, while LIAM and the Insurance Division were reviewing drafts of legislation needed for NAIC accreditation, LIAM lobbyist O'Brien was in frequent contact with the Insurance Division. By July 29, 1992, the Insurance Division filed the legislative packet necessary for NAIC accreditation. By March of 1993, LIAM and the Division of Insurance had devised a joint strategy for seeking legislative approval of the legislation necessary for NAIC accreditation (H.53). That strategy involved Doughty meeting individually with each member of the Insurance Committee and insurance industry representatives.

The May 13 dinner for Doughty cost \$50 or more and, thus, was "of substantial value" for purposes of § 3(a).^{34/}

LIAM's payment for the May 13 dinner for Doughty was not provided for by law for the proper discharge of official duties. Moreover, the parties stipulated that none of the expenditures referenced in the OTSC, including the May 13 dinner, was paid by LIAM because of personal friendship.

Given that LIAM's sole purpose for existing is to lobby on behalf of its member companies on matters related to insurance legislation and regulation and that at the time of the May 13 dinner, Doughty had taken official acts and reasonably could be expected to take future official acts of interest to LIAM, we find that LIAM bought Doughty's dinner on May 13, 1992 for or because of any official act performed or to be performed by her. In light of the above-described evidence, we do not find credible Carroll's testimony that he did not pay for the May 13 dinner for or because of any official act performed or to be performed by Doughty.

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on May 13, 1992, LIAM violated § 3(a) by giving a gratuity of substantial value to Doughty, for or because of official acts performed or to be performed by her.

8. March 12, 1993 Dinner (Ritz Carlton/The Grill Restaurant, Amelia Island, FL)

The Petitioner alleges that LIAM violated § 3(a) when it bought dinner for at least seven Massachusetts state representatives, at least six of whom were accompanied by guests, on March 12, 1993.

As the parties have stipulated, about 24 persons, including Mara and his wife, T. Walsh and his wife, Cass, M. Walsh and his wife, Honan and his guest, Scaccia, Cox and his wife and Poirier had dinner with Carroll at The Grill Restaurant, Ritz Carlson Hotel, on Amelia Island, Florida on March 12, 1993 during the time period of the NCOIL conference at Amelia Island Plantation, Amelia Island, Florida. Also present at the March 12 dinner were Dillon, Sawyer and his wife, registered legislative agent Arthur Lewis and his wife, Massachusetts Medical Society registered legislative agent Andrew Hunt, BlueCross and BlueShield registered legislative agent Marcy McManus, Health Association of America and Massachusetts Association of Life Underwriters registered legislative agent Donald Flanagan, and Francis Carroll of the Small Business Service Bureau, Inc. The March 12 dinner was not an official part of the 1993 NCOIL Amelia Island conference. The total cost of the March 12 dinner was \$3089.16, inclusive of tax of \$146.94 and a tip of \$493.22. Carroll paid the March 12 dinner bill with his LIAM credit card, and LIAM subsequently paid the credit card charge for the cost of the dinner. None of the Massachusetts legislators present paid anything toward the March 12 dinner.

On March 12, 1993, Mara was a state representative and the House Chairperson of the Insurance Committee; T. Walsh was a state representative and the House Vice-Chairperson of the Insurance Committee; Cass was a state representative and a member of both the Insurance Committee and the Health Care Committee; M. Walsh was a state representative and the House Chairperson of the Joint Government Regulations Committee (Government Regulations Committee); Honan was a state representative and the House Vice-Chairperson of the Government Regulations Committee and a member of the Taxation Committee; Scaccia was a state representative and the House Chairperson of the Taxation Committee; Cox was a state representative and the Chairperson of the House Committee on Bills in Third Reading and Poirier was a state representative and a member of the House Ways and Means Committee. As members of the Massachusetts Legislature, Mara, T. Walsh, Cass, M. Walsh, Honan, Scaccia, Cox and Poirier were state employees within the meaning of G.L. c. 268A. The Massachusetts legislators present at the March 12 dinner had authority to take official action on legislative matters which could affect the financial interests of, among others, LIAM's members. Moreover, the legislators attending the March 12 dinner exercised that authority numerous times during the years 1992 and 1993, taking official actions concerning legislation affecting the interests of LIAM's members.

The parties have also stipulated that prior to and during 1993, LIAM, through its legislative agents, engaged in legislative activity in connection with certain insurance and taxation issues. Specifically, as early as March 6, 1991, Carroll testified before the Taxation Committee, of which, at that time, Scaccia served as House Chairperson. Subsequently, in a letter dated March 31, 1992, and addressed to Scaccia as Co-Chairman of the Taxation Committee, Carroll submitted written testimony on behalf of LIAM supporting H.3466 (reforming the taxation of domestic life insurance companies). In a second letter to Scaccia as Co-Chairman of the Taxation Committee, also dated March 31, 1992, Carroll filed written testimony on behalf of LIAM opposing H.2378 and H.2568 (both relative to bank taxation and competitive equality) and H. 2912 (relating to the taxation of banks and bank-like entities).

For example, as of January 25, 1993, H.53 (relating to NAIC accreditation of the Division of Insurance) was pending in the Insurance Committee, of which Mara served as House Chairperson, T. Walsh served as House Vice-Chairperson and of which Cass was a member. At that time, LIAM was engaged in drafting

certain language (relating to an extraordinary dividends provision in H.53) which it intended to present to the Insurance Committee. In January, 1993, LIAM was also engaged in an effort to have H.53 heard by the Insurance Committee at the earliest possible opportunity. As of February 4, 1993, Dillon had met with members of the Insurance Committee concerning a hearing date for H. 53, which by February 25, 1993 had been scheduled for March 22, 1993. The record also demonstrates that, prior to the March 12 dinner, both Carroll and Dillon had spoken to T. Walsh regarding H.53. By March 8, 1993, LIAM and the Insurance Division had developed a joint strategy for the March 22, 1993 Insurance Committee hearing, which in part, involved Doughty meeting individually with each member of the Insurance Committee.

On March 8, 1993, four days prior to the March 12 dinner, the Insurance Committee held hearings in relation to eight bills which sought to mandate that insurers provide new health insurance benefits.^{35/} LIAM submitted a statement in opposition to all of these bills.

The record also demonstrates that, as of February 19, 1993, Cox, who then served as Chairperson of the House Committee on Bills in Third Reading, had been identified to LIAM as a “key legislator” in relation to the legislature’s consideration of H.53. Also, as of February 4, 1993, Dillon had met with the staff of the House Ways and Means Committee, of which Poirier was a member, concerning NAIC-related funding for the Division of Insurance.^{36/}

Furthermore, on March 9, 1993, the Health Care Committee, of which Honan was the House Chairperson and Cass was a member, held a hearing in relation to H.1818 (relating to coverage by certain health care insurance plans and policies of costs arising from speech and language disorders). At that hearing LIAM submitted a statement in opposition to the legislation. Additionally, on March 9, 1993, the Health Care Committee held hearings in relation to H.506, H.1812, H.2571 and S.487 (regulating entities performing utilization review) at which time a statement in opposition to all four bills was jointly submitted by LIAM and the Health Insurance Association of America.

At the time Carroll paid for the March 12 dinner, several bills of interest to LIAM were pending in the Insurance Committee,^{37/} the Taxation Committee,^{38/} the Health Care Committee^{39/} and the legislature as a whole. Given that fact and the various duties and responsibilities of the legislators who attended the March 12 dinner, Carroll and LIAM should reasonably have expected that the legislators attending the March 12 dinner would take official actions of interest to the organization and its members subsequent to the dinner.

The record confirms that each of the legislators who attended the March 12 dinner, in fact, did perform such official acts after March 12, 1993. For example, on March 22, 1993, the Insurance Committee held a hearing on H.1846 (exempting life, health and accident insurance benefits from seizure under process). In connection therewith, LIAM provided a statement in support of H.1846.^{40/} On April 5, 7 and 12, 1993, the Insurance Committee held hearings in relation to 14 bills which mandated additional insurance benefits. In connection with those hearings, LIAM submitted a statement opposing all 14 bills.

Moreover, the record demonstrates that subsequent to the March 12 dinner, on March 25, 1993, LIAM submitted its recommendation on 14 bills^{41/} for which the Health Care Committee held hearings on March 24, 1993. Additionally, by letter dated March 30, 1993, addressed to Scaccia as Co-Chairperson of the Taxation Committee, Carroll filed written testimony on behalf of LIAM supporting H.4434. The Taxation Committee conducted a hearing regarding H.4434 on March 24, 1993.

Finally, on March 22, 1993, the Insurance Committee held a hearing in relation to H.53 (NAIC accreditation bill), discussed above. At that hearing Carroll testified in support of the bill. On June 16, 1993, the Insurance Committee reported out H.53, with a new draft and H.5220, which was reported out favorably. Thereafter, H.5220 was referred to the House Ways and Means Committee which reported out the bill on September 20, 1993 with a recommendation that the bill “ought to pass with certain amendments.” Also on September 20, 1993, H.5220 was reported out by the House Committee on Bills in Third Reading “to be correctly drawn.” A third reading of the H.5220 followed and the bill was passed to be engrossed. Following action by the Senate and concurrence by the House in Senate proposed amendments, on November 6, 1993, H.5220 was enacted and presented to the Governor, who signed the bill into law on November 9, 1993.

The March 12 dinner for Mara and his wife, T. Walsh and his wife, Cass, M. Walsh and his wife, Honan and his guest, Scaccia, Cox and his wife and Poirier cost \$50 or more per person and thus, was “of substantial

value” for purposes of § 3(a).^{42/}

LIAM’s payment for the March 12 dinner for Mara, T. Walsh, Cass, M. Walsh, Honan, Scaccia, Cox and Poirier was not provided for by law for the proper discharge of official duties. Moreover, the parties stipulated that none of the expenditures referenced in the OTSC, including the March 12 dinner, was paid by LIAM because of personal friendship.

Given that LIAM’s sole purpose for existing is to lobby on behalf of its member companies on matters related to insurance legislation and regulation and that Mara, T. Walsh, Cass, M. Walsh, Honan, Scaccia, Cox and Poirier had taken official acts and reasonably could be expected to take future official acts of interest to LIAM, we find that LIAM bought Mara’s (and his wife’s), T. Walsh’s (and his wife’s), Cass’, M. Walsh’s (and his wife’s), Honan’s (and his guest’s), Scaccia’s, Cox’s (and his wife’s) and Poirier’s dinners on March 12, 1993 for or because of any official act performed or to be performed by them. In light of the above-described evidence, we do not find credible Carroll’s testimony that he did not pay for the March 12 dinner for or because of any official act performed or to be performed by Mara, T. Walsh, Cass, M. Walsh, Honan, Scaccia, Cox and Poirier.

Consequently, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that on March 12, 1993, LIAM violated § 3(a) by giving gratuities of substantial value to Mara, T. Walsh, Cass, M. Walsh, Honan, Scaccia, Cox and Poirier, for or because of official acts performed or to be performed by each of them.^{43/}

V. Order

Pursuant to the authority granted it by G.L. c. 268B, ‘§4(j), the State Ethics Commission hereby orders the Life Insurance Association of Massachusetts to pay the following civil penalty for violating G.L. c. 268A, § 3(a). We order the Life Insurance Association of Massachusetts to pay \$13,500.00 (thirteen thousand five hundred dollars) to the State Ethics Commission within 30 days of its receipt of this Decision and Order.

DATE: December 16, 1997

^{42/} LIAM’s original Answer was filed on July 11, 1995.

^{43/} That statute provides:

[A]ctions of tort . . . shall be commenced only within
three years next after the cause of action accrues.

G.L. c. 260, § 2A (emphasis added).

^{44/} Such a disinterested person may be the Petitioner, the Attorney General or the appropriate District Attorney. The latter two offices are the law enforcement agencies authorized to enforce G.L. c. 268A criminally.

^{45/} The Respondent appears to assume mistakenly that Commission proceedings necessarily result in punitive relief and that the Petitioner sought only the imposition of civil fines. However, the remedies available to the Commission include issuing an order requiring the violator to (i) cease and desist the violation; (ii) file any report, statement or other information required by law; or (iii) pay a civil penalty of not more than two thousand dollars for each violation. G. L. c. 268B, §4(j). The Petitioner requested in its OTSC that the Commission “levy such fines, issue such orders and grant such other relief as it deems appropriate.” OTSC, p. 8. It is impossible to determine which remedy, if any, the Commission will apply before it determines whether and what type of a violation has occurred.

^{46/} Since at least 1974, the Supreme Judicial Court has “interpreted accrual language in c. 260 to incorporate the discovery rule.” *Pobieglo v. Monsanto Co.*, 402 Mass. 112, 116 (1988).

^{47/} That subsection of the regulation reads, in relevant part:

When a statute of limitations defense has been asserted, the petitioner will have the burden of showing that a disinterested person learned of the violation no more than three (3) years before the order was issued. The burden will be satisfied by:

1. an affidavit from the investigator currently responsible for the case that the Enforcement Division’s complaint files have been reviewed and no complaint relating to the violation was received more than three (3) years before the

order was issued; and

2. with respect to any violation of M.G.L. c. 268A other than §23, affidavits from the Department of the Attorney General and the appropriate Office of the District Attorney that, respectively, each office has reviewed its files and no complaint relating to the violation was received more than three (3) years before the order was issued; . . .

930 C.M.R. §1.02(c).

⁷The OTSC in this case issued on June 20, 1995.

⁸The Attorney General and the District Attorneys may refer possible violations to the Commission for civil enforcement. We note that five of the nine gratuities were given by the Respondent to state officials outside Massachusetts, thus making the Petitioner's discovery of those violations all the more difficult.

⁹ This case is distinguishable from the situation in *In re Saccone and Delprete*, 1982 SEC 82, cited by Respondent. In that decision, issued prior to the promulgation of 930 C.M.R. 1.02, the Commission concluded that the Petitioner had failed to demonstrate that it was unable to discover the violations earlier. Accordingly, the running of the statute of limitations was not tolled.

¹⁰In ascertaining value, the Commission applies an objective test of substantial value, rather than the subjective consideration of the personal value placed on an item or event by the individual receiving the gratuity, at least where the gratuity is an item of tangible value. *EC-COI-92-32*; See *In re Flanagan*, 1996 SEC 757 (no reliable or objective evidence from which Commission could ascertain value of car). Beyond cash gifts, the Commission has determined various types of gratuities to be of substantial value, including: entertainment (See e.g., *In re Mara*, 1994 SEC 673); meals and golf (See e.g., *In re United States Trust Company*, 1988 SEC 356; *In re Scaccia*, 1996 SEC 838).

¹¹ Prior to issuing *EC-COI-93-14*, the Commission invited legal arguments from interested parties, including the Office of the Governor's Legal Counsel, Counsels for the Massachusetts House of Representatives and Senate, Common Cause and the Massachusetts Municipal Association. The Commission received no responses to its invitation.

¹² "State employee," a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council. G.L. c. 268A, § 1(q).

¹³ Those bills included: H.609, the LIAM-sponsored Privacy Bill (establishing standards for the collection, use and disclosure and privacy of information concerning insurance transactions); H.4901, opposed by LIAM (regulating HIV testing in determining eligibility for health care insurance); S.2099 Health Emergency Alleviation (freezing rates for individual and small group products).

¹⁴ Based on the testimony of Dr. Allen Michel, a professor at Boston University, and relying on the Consumer Price Index for Urban Consumers, the Respondent urges the Commission to value the meals provided to the state employees identified in the OTSC (and the golf clubs given to Emilio) in "1972 dollars" (the year in which the events which are the subject of the *Famigletti* decision occurred). As explained earlier, in determining whether the \$50 "substantial value" threshold has been met, we seek to employ a workable and consistent measure which public employees and private parties may use to guide their conduct. Consequently, we will continue to determine the value of a gratuity based on the actual dollars at the time the gratuity was given. See also *EC-COI-93-14* and footnote 10.

¹⁵ We reach this conclusion based on Woodward's and his spouse's pro rata shares of the total cost of the July 21 dinner. We have calculated the pro rata share by dividing the total cost of the dinner (\$302.53) by the number of participants (four people) to reach a per person cost of \$75.63. See *In re Scaccia*, 1996 SEC 838, 840 (Findings of Fact No. 23, 30, 43, 54, using same methodology); *In re United States Trust Company*, 1988 at 360, n. 5. We note that the Respondent views the pro rata methodology as an inappropriate means of allocating an expenditure to a public official. In particular, the Respondent argues that the Petitioner's approach is flawed because it includes amounts attributable to tax and tip. We, however, do not find this argument persuasive where applicable taxes are an unavoidable cost associated with a restaurant meal and where the tip may be viewed as payment for the quality of the service associated with the meal and therefore may reasonably be included as a benefit provided to those consuming the meal.

¹⁶ Members of the Massachusetts Legislature receive compensation pursuant to G.L. c. 3, §9, which does not provide that members are entitled to gifts of free meals as part of their compensation package.

¹⁷ The Commission attributes the value of the donor's payment for the spouse's/guest's expenses to the public official. See *In re United States Trust Company*, 1988 SEC at 360, n. 5. This is because the public official indirectly receives something of value for himself, including the financial benefit of not paying for his companion.

¹⁸ S.2099 Health Emergency Alleviation (freezing rates for individual and small group products).

¹⁹ Those bills included: H.553, the LIAM-sponsored Privacy bill; H.734, permitting insurers to value real estate at assessed value; H.1349, permitting life insurance companies to exchange policies with their affiliates; H.2157, concerning valuation of capital stock of insurers and subsidiaries; H.5649, concerning investments of insurance companies; H.3343, regulating access to health care; H.2493, H.2496, H.3560, concerning gender neutral insurance; H.3559, concerning reduced insurance rates for non-smokers; H.79, concerning discrimination against the handicapped.

^{20/} We reach this conclusion by calculating Mara's and Smith's pro rata shares of the total cost of the December 20 dinner. We have calculated the pro rata share by dividing the total cost of the dinner (\$150.53) by the number of participants (three people) to reach a per person cost of \$50.18.

^{21/} In addition to H.734 described above, those bills included: H.553, the LIAM-sponsored Privacy bill; H.1349, permitting life insurance companies to exchange policies with their affiliates; H.2157, concerning valuation of capital stock of insurers and subsidiaries; H.5649, concerning investments of insurance companies; H.3343, regulating access to health care; H.2493, H.2496, H.3560, concerning gender neutral insurance; H.3559, concerning reduced insurance rates for non-smokers; H.79, concerning discrimination against the handicapped.

^{22/} The record indicates that because this bill had been previously considered by the Insurance Committee, no oral arguments were heard. However, interested parties were permitted to file written statements.

^{23/} We reach this conclusion based on Woodward's and his spouse's pro rata shares of the total cost of the March 22 and 23 dinners. In each case, we have calculated the pro rata share by dividing the total cost of the dinners (\$171.42 for March 22) (\$199.28 for March 23) by the number of participants (five people on March 22) (six people on March 23) to reach a per person cost of \$34.29 for March 22 and \$33.21 for March 23.

^{24/} Indeed, the Insurance Committee reported out favorably H.734 and H.1349 on May 31, 1990 and H.5469 on June 6, 1990, all of which had been sponsored by LIAM. Furthermore, on May 21, 1990, the Insurance Committee reported out H.553, the LIAM-sponsored privacy bill, with a new draft.

^{25/} We reach this conclusion based on Emilio's and his spouse's pro rata shares of the total cost of the November 24 dinner. We have calculated the pro rata share by dividing the total cost of the dinner (\$2243.97) by the number of participants (20 people) to reach a per person cost of \$112.20.

^{26/} The companies were John Hancock, The New England and Mass Mutual.

^{27/} We reach this conclusion based on LIAM's share of the cost of the January 8 dinner and its contribution towards the gift of golf clubs. LIAM contributed \$77.32 towards the dinner and \$67.38 for the golf clubs which were given to Emilio.

^{28/} Carroll's testimony that people at the State House genuinely liked Emilio and that he was a former insurance agent does not alter our conclusion on this point.

^{29/} Those bills included: H.6280 and H.6307 (both relating to health care access and financing).

^{30/} These included H.6307 (an amended version of H.6280), signed into law, St.1991, c. 495; H.1667, signed into law, St.1991, c. 516; H.391, returned by Governor; H.6015 (an amended version of H.390), signed into law, St.1991, c. 339; H.3973, signed into law, St.1991, c. 347; and H.4165, approved and engrossed by House, but died in Senate Third Reading Committee.

^{31/} We reach this conclusion based on each legislator's and his spouse's pro rata shares of the total cost of the November 16 dinner. We have calculated the pro rata share by dividing the total cost of the dinner (\$1170.00) by the number of participants (20 people) to reach a per person cost of \$58.50.

^{32/} By the standards of the NAIC, a state division of insurance is deemed qualified to regulate the industry in its state. NAIC accreditation in substantial part depends on the state division of insurance being properly funded, staffed, organized and managed, as well as the passage of certain legislation.

^{33/} Including the filing of necessary legislation and securing an appropriation to allow for increased staffing at the Division of Insurance.

^{34/} We reach this conclusion based on Doughty's pro rata share of the total cost of the May 13 dinner. We have calculated the pro rata share by dividing the total cost of the dinner (\$337.46) by the number of participants (three people) to reach a per person cost of \$112.49.

^{35/} S.615 (insurance coverage for mental illness), S.624 (access to educational psychologists services), S.626 (access to mental health services), S.658 (mandating insurance coverage for bone densitometry), H.313 (requiring insurance payments for the toxin Botulinum), H.716 (providing for home care services for certain children), H.1320 (improving mental health services), H.2039 (reimbursement by health insurers for bone marrow transplants for breast cancer patients).

^{36/} The parties have stipulated that in 1992 and 1993, LIAM supported increased funding for the Division of Insurance.

^{37/} In addition to those bills listed in footnote 35, at least 17 other bills of interest to LIAM were pending in the Insurance Committee.

^{38/} Including H.4434 which concerned the taxation of domestic life insurance companies.

^{39/} In addition to H.1818, H.506, H.1812, H.2571 and S.487, discussed above, pending before the Committee were a series of bills relating to a single payor system (S.478, H.1082, H.2796, H.3555), health care financing (S.489, H.505, H.2018), determination of need (S.455, H.504, H.2210), uncompensated care pool (H.1660, H.1652, H. 2205), and competition (H.1656).

^{40/} On March 22, 1993, Carroll provided a statement in opposition to H.1110 and H.2821 (both entitled an Act Creating an Insurance Community Reinvestment Act), during a hearing before the Insurance Committee on those bills.

^{41/} See Footnote 39.

^{42/} We reach this conclusion based on each legislator's and his spouse's/guest's pro rata shares of the total cost of the March 12 dinner. We have calculated the pro rata share by dividing the total cost of the dinner (\$3089.16) by the number of participants (25 people) to reach a per person cost of \$123.57. The fact that in April 1993, LIAM received contributions in the amount of \$1100 towards its expenditure for the March 12 dinner does not alter our conclusion that the meals paid for by LIAM on March 12, 1993 were of substantial value. This is especially the case where, even if we were to subtract the post-event contributions from LIAM's expenditure, the pro rata share of the March 12 dinner would be \$79.57. Moreover, we are not persuaded by the Respondent's argument that the cost of cognac, which it did not specifically authorize, should be excluded from the cost of the March 12 dinner. We find no basis for excluding the cost of the cognac where LIAM paid for that expense and the record contains no evidence that LIAM made any arrangement to limit the ordering of alcoholic beverages before or during the March 12 event. In addition, the record reflects that LIAM neither sought, nor received, reimbursement for the cost of the cognac from the state legislator recipients.

^{43/} The OTSC also contained an allegation that LIAM provided Red Sox tickets to Representative Woodward on July 21, 1989. In its post-hearing Brief, the Petitioner notes that it is not pursuing this allegation "Due to lack of evidence." Consequently, with regard to this charge, we find that the Petitioner has not met its burden.